UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

AT&T COMMUNICATIONS OF OHIO, INC., an Ohio corporation, and TCG OHIO, a New York General Partnership, Plaintiff, vs. Ohio Bell Telephone Company, an Ohio corporation, d/b/a Ameritech Ohio, SBC/Ameritech Ohio and/or SBC Ohio, Inc., and Alan R. Schriber, Ronda Hartman Fergus, Judy A. Jones, Donald L. Mason, and Clarence D. Rogers, Jr., in their official capacities as Commissioners of The Public Utilities Commission of Ohio. Defendants.	Case No._____ COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs AT&T COMMUNICATIONS OF OHIO, INC. and TCG OHIO (collectively, "AT&T"), by their attorneys, for their complaint, allege:

NATURE OF THE ACTION

1. AT&T brings this action to secure full implementation of the congressionally mandated process for opening local telephone markets to competition under the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act" or "1996 Act"). This case arises out of ongoing efforts by AT&T to compete with Defendant Ohio Bell Telephone Company a/k/a Ameritech Ohio, SBC/Ameritech Ohio and/or SBC Ohio ("SBC"),

the monopoly incumbent local exchange carrier ("ILEC") in providing local telephone services to Ohio consumers, and to require SBC to fulfill its obligations under the Act.

2. More specifically, it arises from the June 21, 2001 Order ("Order") and October 16, 2001 Entry on Rehearing ("Entry") issued by The Public Utilities Commission of Ohio ("PUCO") and by the Commissioners of the Public Utility Commission of Ohio, acting in their official capacities ("the Defendant Commissioners"). In the Order and Entry, the PUC and Defendant Commissioners determined that SBC would be required to pay AT&T "reciprocal compensation" at a rate other than that authorized by the 1996 Act and binding rules issued by the Federal Communications Commission ("FCC"). The Order and Entry became final on April 24, 2003, when the PUCO and Defendant Commissioners approved the final Interconnection Agreements between SBC and each Plaintiff.

3. SBC is currently the incumbent monopoly provider of both local exchange and exchange access services in territory in the State of Ohio. Local exchange service is the use of the local network to provide communications services within a local calling area to residential and business consumers. Exchange access service is the offering of access to the same local network facilities for the origination and termination of telephone toll (or long distance) services.

4. The 1996 Act was passed in order to end the prior regime in which ILECs monopolized the local facilities and services through which consumers place and receive all local and long-distance telephone calls. *See Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646 (2002); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In its place, the 1996 Act mandates a new competitive regime and requires the removal of legal and economic impediments to local exchange and exchange access competition. *AT&T*, 525 U.S. at 371. "Under the local-competition provisions of the Act, Congress called for ratemaking different

from any historical practice, to achieve the entirely new objective of uprooting the monopolies that traditional rate-based methods had perpetuated." *Verizon*, 122 S. Ct. at 1660.

5. Congress recognized that to overcome incumbent monopolists' strong economic incentives to delay and impede competition, the 1996 Act had to do more than simply strip away legal barriers to competition. In order to shift monopoly local telephone markets to competition as quickly as possible, the Act requires SBC and other ILECs to enter "interconnection" agreements that will allow "requesting telecommunications carriers" such as AT&T to offer competing local exchange and exchange access services immediately. 47 U.S.C. §§ 251(c)(1)-(3).

6. These interconnection agreements set the terms and conditions upon which AT&T and other potential new entrants may use incumbents' services and facilities and reflect the specific duties that the 1996 Act places on incumbents. Among other things, the Act requires incumbents to permit new entrants to obtain nondiscriminatory access to individual "unbundled" elements of an incumbent's network at nondiscriminatory, cost-based rates so that new entrants can use those elements to provide competing local exchange and exchange access services.

7. The 1996 Act establishes a procedure for new entrants, or competitive local carriers ("CLECs"), to secure the agreements with incumbent local telephone companies necessary to create the new competitive regime. Congress directed incumbents to negotiate in good faith with potential competitors seeking interconnection agreements. It also provided for arbitration by state public utility commissions where interconnection agreements could not be reached through negotiation. The arbitration proceedings before state public utility commissions are subject to certain provisions of the 1996 Act and to rules set forth by the FCC. *See* 47 U.S.C. § 252(e)(2)(b).

8. To ensure that interconnection agreements resulting from the state-conducted arbitrations comply with the federal requirements in the Act and the FCC's implementing rules, Congress authorized federal court review of completed interconnection agreements approved by state commissions. *See* 47 U.S.C. § 252(e)(6).

JURISDICTION AND VENUE

9. This is a civil action arising under the Telecommunications Act of 1996, a law of the United States. This Court has jurisdiction over this action pursuant to 47 U.S.C. § 252(e)(6) and 28 U.S.C. §§ 1331 and 1337.

10. Venue in this District is proper under 28 U.S.C. § 1391(b). Upon information and belief, all defendants reside in the State of Ohio, and SBC resides in this District. Further, because the Defendant Commissioners conducted the proceedings in this District, a substantial part of the events or omissions giving rise to the dispute occurred in this District. This is an "appropriate Federal district court" within the meaning of 47 U.S.C. § 252(e)(6).

PARTIES

11. Plaintiff AT&T Communications of Ohio, Inc. is a corporation organized under the laws of the State of Ohio. AT&T Communications of Ohio, Inc. is an indirect subsidiary of AT&T Corp., which, through operating subsidiaries, currently provides telecommunications services in the State of Ohio and elsewhere. AT&T Communications of Ohio, Inc. has entered into an interconnection agreement with SBC. The interconnection agreement was arbitrated by the PUCO and the Defendant Commissioners, and was approved on April 24, 2003.

12. Plaintiff TCG Ohio is a New York general partnership, and is also an indirect subsidiary of AT&T Corp. Plaintiff TCG Ohio also has entered into an interconnection agreement with SBC. The interconnection agreement was arbitrated by the PUCO and the Defendant Commissioners, and was approved on April 24, 2003.

13. AT&T is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of the Act.

14. Upon information and belief, Defendant Ohio Bell Telephone Company is a Ohio corporation. SBC provides local exchange, exchange access, and certain other services within the State of Ohio. SBC is an "incumbent local exchange carrier" within the meaning of the Act. *See* 47 U.S.C. § 251(h). Ohio Bell does business in Ohio under various names, including Ameritech Ohio, SBC/Ameritech Ohio and/or SBC Ohio.

15. The Public Utilities Commission of Ohio is an agency of the State of Ohio. The PUCO is a "State commission" within the meaning of 47 U.S.C. §§ 153(41), 251, and 252.

16. Defendants Alan R. Schriber, Ronda Hartman Fergus, Judy A. Jones, Donald L. Mason, and Clarence D. Rogers, Jr., the individual members of the Public Utilities Commission of Ohio (collectively, the "Defendant Commissioners") are named as Defendants in their official capacities as Commissioners of the PUCO, and not as individuals.

BACKGROUND

History of the 1996 Act

17. Prior to the enactment of the 1996 Act, ILECs (including SBC) generally enjoyed a monopoly in the provision of local telephone services for business and residential consumers within their designated service areas. SBC is the incumbent provider of local telephone service in State of Ohio. SBC's local telephone network, funded by its captive ratepayers, generally reaches all residences and businesses in SBC's Ohio territories.

18. In 1996, Congress passed the Act, which was designed to open up, on a nationwide basis, monopoly markets for local telephone service to full, effective, and fair competition. To this end, Congress expressly authorized the preemption of barriers to entry into local markets. Congress also recognized the practical reality that competition would take years

to develop (and in some areas might not develop at all) if local entry required each new entrant, or CLEC, to replicate the local services infrastructure network. Accordingly, Congress imposed certain affirmative duties on incumbent local exchange carriers to help promote the rapid development of local telephone service competition.

19. In order to implement these and other duties imposed on ILECs by the 1996 Act, Congress included within the Act a three-part procedure of (i) private negotiations, (ii) state (or federal) commission arbitrations subject to the Act and the FCC's implementing regulations, and (iii) federal district court review after a state commission approves or rejects an interconnection agreement. *See* 47 U.S.C. § 252.

The Determination Of Rates For Reciprocal Compensation

20. Once a CLEC enters a local market, telecommunications traffic that originates from end users on one carrier's local network often terminates to end users on another local carrier's network. Under the Act, these local carriers have the obligation to establish "reciprocal compensation" arrangements that compensate the terminating carrier for the costs of the "transport and termination" of that traffic. 47 U.S.C. § 251(b)(5); *see Illinois Bell Tel. Co.* v. *WorldCom Tech., Inc.*, 179 F.3d 566, 568 (7th Cir. 1999). With respect to the terms and conditions that an incumbent LEC charges for reciprocal compensation, the 1996 Act provides that the terms and conditions are not "just and reasonable" unless "(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate and the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. § 252(d)(2)(A).

21. In determining appropriate rates for reciprocal compensation, the FCC recognized that incumbent LECs and competing carriers design their networks differently, and that it would be difficult to identify precisely the cost to terminate such traffic. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 15 FCC Rcd. 15499, ¶ 1090 (1996) ("*Local Competition Order*"). Incumbent carriers typically deploy a "two-level" hierarchy of switches to terminate telecommunications traffic in a geographic area: "end office" switches that are connected to end users and "tandem" switches that perform "tandem" functions, *i.e.*, that aggregate traffic and that route traffic from one switch to another. Traditionally, an incumbent LEC typically imposes a charge for the end office switch, and an additional charge for the tandem-switching function. *Id.*

22. The FCC recognized that a CLEC could not economically use the same network design as incumbents and could not deploy switches that serve only customers in the area covered by a single or even several incumbent LEC end offices. *Id.* In particular, because of the enormous fixed costs of deploying a switch and because a CLEC will necessarily serve only a fraction of the customers in each ILEC end office, a CLEC will not be able to provide switching at unit costs that are close to those of the incumbent's unless it deploys a single switch to serve an area that the incumbent would serve with a minimum of 10 or 15 end office switches. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report & Order, 15 FCC Rcd. 3696, ¶¶ 260-61 (1999). A CLEC will therefore deploy a single switch in a central location, and use combinations of leased "loop" facilities and of "fiber rings" or leased transport facilities to connect each of its customers to the centrally located switch. *See id*; *Local Competition Order* ¶ 1090. In those circumstances, the CLEC's single

switch and transport facilities "perform functions similar to those performed by an incumbent LEC's tandem switch." *Id.*

23. The FCC promulgated a rule that carriers will presumptively have "symmetrical" rates for reciprocal compensation: for equivalent switches, an incumbent carrier will pay a competing carrier the same per-minute rate that a competing carrier pays to an incumbent carrier. *See* 47 C.F.R. § 51.711(a). Thus, with respect to traffic from a CLEC's customers that terminates on the ILEC's network, the CLEC will pay one rate – the "end-office" rate – for traffic from the CLEC's customers that terminates directly at an ILEC end office or will pay a higher rate – the "tandem" rate – for traffic from the CLEC's customers that terminates at the tandem and is then routed to the end office.

24. With respect to traffic from the ILEC's customers to the CLEC's customers which terminates on the CLEC's network, the FCC's rules provide that the CLEC may charge a rate equivalent to the ILEC tandem rate where the CLEC demonstrates that its switch "serves a geographic area comparable to that served by the incumbent LEC's tandem switch." 47 C.F.R. § 51.711(a)(3); *Local Competition Order* ¶ 1090. Otherwise, the CLEC may charge the ILEC only the end-office rate, even if the CLEC pays the ILEC the tandem rate.

25. In later decisions, the FCC has made clear that its rule regarding reciprocal compensation permits a CLEC to charge a rate equivalent to the ILEC tandem rate whenever it demonstrates that the CLEC's switch is "capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch."[1] There is no requirement that the CLEC demonstrate that its switches actually perform functions equivalent to the ILEC

[1] *See* Mem. Op. & Order, *CLEC Petitions Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, 17 FCC Rcd. 27039, ¶ 309 (2002) ("Virginia Arbitration Order").

tandem rate. *Id.* In addition, the "determination whether a competitive LEC's switch 'serves' a certain geographic area does not require an examination of the competitor's customer base." *Virginia Arbitration Order* ¶ 309. Thus, once a CLEC has established that its switch will serve an area geographically comparable to the area served by the ILEC tandem switch, the FCC's Rules require the state commission to authorize the CLEC to charge a rate equivalent to the ILEC tandem rate. *Id.*

The Proceedings Before the PUCO

26. In the proceedings below, the PUCO and the Defendant Commissioners, in their official capacities, misapplied the 1996 Act and the FCC's rule regarding reciprocal compensation. In the Order, the PUCO and Defendant Commissioners found that it "is clear from the record that AT&T's switch will be serving a geographically comparable area to the area served by Ameritech's tandem switch during the term of the new interconnection agreement." Order, p. 12.

27. Given this finding, the Act and applicable FCC rules plainly entitle AT&T to charge a rate equivalent to the ILEC tandem rate for reciprocal compensation. The PUCO and the Defendant Commissioners disregarded this mandate, ruling that "AT&T would be eligible for compensation at the tandem interconnection rate only when it terminates Ameritech-originated traffic carried over tandem interconnection facilities. In other words, if AT&T establishes direct interconnection trunks between its switch and Ameritech's end office switch, it will be compensated for local traffic . . . at the end office compensation rate." *Id.*

28. On July 23, 2001, AT&T timely moved for re-hearing before the PUCO on certain issues, including its holding on reciprocal compensation. In its Entry on Rehearing, issued on October 16, 2001, the PUCO and the Defendant Commissioners again held that AT&T

had "met the geographical comparability test," but maintained that AT&T could not in all instances charge the equivalent of the ILEC tandem rate for reciprocal compensation purposes.

29. The Order and Entry became final on April 24, 2003, when the PUCO and the Defendant Commissioners approved the final Interconnection Agreements, which were modified to comply with the Order and Entry.

30. Thereafter, AT&T filed this Complaint for Declaratory and Injunctive Relief with the U.S. District Court.

COUNT ONE

THE RATE FOR RECIPROCAL COMPENSATION PAID TO AT&T VIOLATES THE ACT AND THE FCC'S IMPLEMENTING RULES AND IS OTHERWISE ARBITRARY AND CAPRICIOUS

31. Paragraphs 1 through 30 are incorporated by reference as if set forth fully herein.

32. As AT&T demonstrated to the PUCO and the Defendant Commissioners, AT&T's switches are capable of serving a geographic area that is comparable to the architecture served by Ameritech's tandem switches.

33. Accordingly, AT&T is entitled to charge SBC for reciprocal compensation a rate equivalent to the tandem rate charged by SBC for all traffic originated on SBC's network and terminated on AT&T's network.

34. The PUCO's Order and Entry, requiring SBC to pay the lower, end-office rate, rather than the higher, tandem rate, when AT&T's switches terminate traffic that originated on SBC's network, violate the 1996 Act, the FCC's implementing rules, and is otherwise arbitrary and capricious.

35. AT&T has been aggrieved by the Defendant Commissioners' determinations set forth herein and by Defendant SBC's use of such determinations in the parties' interconnection

agreement. Plaintiff AT&T is therefore entitled to declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and 47 U.S.C. § 252(e)(6).

PRAYER FOR RELIEF

WHEREFORE, AT&T requests that this Court grant them the following relief:

(a) declare that the interconnection agreements and the Order and Entry of the PUCO and the Defendant Commissioners are invalid and violate the 1996 Act and the FCC's implementing regulations and vacate the Order and Entry insofar as they fail to require Defendant SBC to pay AT&T reciprocal compensation at the tandem rate for all traffic that originates on SBC's network and that is transported and terminated over AT&T's geographically comparable network;

(b) grant AT&T permanent injunctive relief to prevent the harm that they will suffer under the Order and Entry and enjoin all defendants and anyone acting in concert with them from enforcing or attempting to enforce the Order and/or Entry and resulting interconnection agreements insofar as such Order and/or Entry and agreements limit AT&T's ability to charge Defendant SBC only the prices adopted in the Order and Entry;

(c) award AT&T such other and further relief as the Court deems just and proper.

Dated: May 23, 2003

By:_____

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